

ROBERT M. HERNANDEZ

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1 A. Patient billings.
 2 Q. And patient billings are reflected in?
 3 A. In the receivables.
 4 Q. And, therefore, that's an important line item
 5 to monitor and keep control of?
 6 A. Oh, it always is for any, you know, any
 7 organization.
 8 Q. And that's consistent with your view about the
 9 importance of moving toward an operating
 10 break-even point?
 11 MR. FRIESEN: Objection.
 12 Q. That is, getting to a break-even financial
 13 number on a yearly statement of operations
 14 basis exclusive of investments and things like
 15 that?
 16 MR. RESTIVO: I want that question,
 17 assuming it's a question, read back.
 18 - - -
 19 (The record was read back by the Reporter.)
 20 - - -
 21 A. I can answer it? Not really. There's -- it's
 22 not inconsistent, but this is a -- a financial
 23 thing. This is talking about collecting on
 24 your billings. These -- when it hits accounts
 25 receivable, it's already recorded as a revenue,

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1 and by doing -- by improving this, you are
 2 going to improve your cash position, your
 3 health and your balance sheet, you are not
 4 going to improve your operating income.
 5 Q. I understand. It's another facet --
 6 A. It's another facet to the -- to the management.
 7 Q. And another way to measure financial health?
 8 A. Yes, oh, absolutely.
 9 Q. Have you ever been -- strike that.
 10 Let me ask you this, Mr. Hernandez:
 11 If the auditors at Coopers & Lybrand had told
 12 you that the fiscal year 1996 or fiscal year
 13 1997 financial statements that were presented
 14 to them for their audit were materially
 15 misstated and that C & L was, therefore,
 16 issuing an adverse opinion on those financial
 17 statements in either year, would that have
 18 caused you concern?
 19 A. Yes.
 20 MR. FRIESEN: Objection.
 21 Q. And why is that?
 22 A. Again, it means that -- I mean it's not a -- I
 23 mean it's very unusual and it means that the
 24 financial statements cannot be relied upon.
 25 Q. Would it have caused you to consider the

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1 competence and integrity of financial
 2 management?
 3 A. Yes.
 4 Q. And when you have those kinds of concerns, do
 5 you have options as a board member and how to
 6 address them?
 7 A. Yes.
 8 Q. What kind of options?
 9 A. Well, you can terminate them, replace them,
 10 change their positions.
 11 Q. Terminate them?
 12 A. Yeah, sure.
 13 Q. You can also instruct auditors to expand their
 14 scope and their work?
 15 A. Yes.
 16 Q. Dig deeper?
 17 A. Yes.
 18 Q. You can also engage other consultants; is that
 19 fair to say?
 20 A. Right, sure.
 21 Q. In fact, you reached out, I think you told us,
 22 to Lehman Brothers in a sale transaction --
 23 A. Mm-hmm.
 24 Q. -- as an advisor; is that right?
 25 A. Right.

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1 Q. And if you had learned what I just shared with
 2 you about the adverse opinion, you would have
 3 considered all those options and counseled with
 4 fellow board members and taken the best course
 5 of action that you thought most prudent I
 6 presume?
 7 MR. FRIESEN: Objection.
 8 A. Yes.
 9 Q. If Coopers & Lybrand had told you that the net
 10 income figure that we saw in the '96 financial
 11 statements, I think it was 6, roughly \$6.5
 12 million?
 13 A. I don't remember.
 14 Q. It was a little over \$6 million, if they had
 15 told you that net income in fiscal year 1996,
 16 either in audit committee meeting or full board
 17 meeting, that that figure had overstated net
 18 income in 1996, contrary to generally accepted
 19 accounting principals, by \$80 million or more,
 20 would that have caused you concern?
 21 MR. FRIESEN: Objection.
 22 A. Well, let me answer the question this way: I
 23 think the reason for the overstatement would
 24 have been important in whether I was concerned
 25 or not.

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1 Q. Right, and if --
 2 A. And to be honest, \$80 million in the total
 3 scheme of things, and if it was an \$80 million
 4 loss in a year, it may or may not have been a
 5 concern, it just depends on why.
 6 Q. And you would have asked questions about what
 7 the answer to that why question -- what the
 8 answers to that why question were?
 9 A. I would think I would have.
 10 Q. And you had the same kinds of options available
 11 to you that we just discussed?
 12 A. Yes.
 13 Q. If you didn't like the answers; is that fair to
 14 say?
 15 A. That's fair to say.
 16 Q. But \$80 million is a number that would have
 17 caused inquiry on your part?
 18 MR. FRIESEN: Objection.
 19 A. I think so.
 20 Q. Similarly, if the 1997 financial statements had
 21 been overstated, in the statement of operations
 22 had been overstated in the net income row by
 23 more than \$100 million, you would have had the
 24 same kinds of concern?
 25 A. Yes.

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1 Q. And the same kinds of options?
 2 A. Yes.
 3 Q. If Coopers & Lybrand had told you that its
 4 auditors questioned or had concerns about the
 5 integrity and honesty of members of financial
 6 management at AHERF, whether Mr. McConnell,
 7 Mr. Abdelhak or others, would that have caused
 8 you concern --
 9 A. Yes.
 10 Q. -- during your years of board service?
 11 A. Yes.
 12 Q. You would have made inquiry had you learned
 13 that?
 14 A. Yes.
 15 Q. And you would have had the same kinds of
 16 options we discussed?
 17 A. Yes.
 18 Q. You would have followed those options through
 19 their prudent course?
 20 MR. FRIESEN: Objection.
 21 A. Yes.
 22 Q. Is that a yes, I'm sorry?
 23 A. Yes.
 24 Q. And if Coopers & Lybrand had told you that the
 25 fiscal year 1996 and 1997 financial statements

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1 presented for audit to them were the product of
 2 fraudulent conduct or suspected fraudulent
 3 conduct on the part of financial management,
 4 would that have concerned you?
 5 A. Yes.
 6 Q. Most definitely?
 7 A. Yes.
 8 Q. And you would have had the same kinds of
 9 options and would have pursued them I presume?
 10 A. Yes.
 11 Q. If C & L had told you or somebody at Coopers &
 12 Lybrand had told you that the 1996 or 1997
 13 financial statements presented for audit had
 14 been intentionally misstated by financial
 15 management in their view, would that have
 16 concerned you?
 17 A. Yes.
 18 Q. And the same options and course of conduct you
 19 would have followed?
 20 A. Yes.
 21 Q. If you learned that the 80 million -- strike
 22 that.
 23 MR. JONES: I don't think I have
 24 anything further.
 25 MR. FRIESEN: I just have a couple of

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1 follow-up questions.
 2 THE WITNESS: Sure.
 3 ----
 4 RE-EXAMINATION
 5 ----
 6 BY MR. FRIESEN:
 7 Q. Using Mr. Jones' hypothetical, if you learned
 8 at the time that the fiscal year 1996 financial
 9 statements overstated net income by \$80
 10 million, can you say sitting here today with
 11 certainty what precisely it would have been
 12 that you would have done?
 13 A. No.
 14 MR. JONES: Object to form.
 15 Q. And the other hypothetical regarding the \$100
 16 million net income overstatement in fiscal year
 17 1997, could you say sitting here with certainty
 18 if you would have known that, hypothetically,
 19 what precisely you would have done?
 20 MR. JONES: Object to form.
 21 A. No.
 22 MR. JONES: And foundation in both.
 23 Q. And the same question with regard to an adverse
 24 opinion from the auditors on either of those
 25 financial statements, if you had received that,

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1 do you know sitting here today with certainty
 2 precisely what you would have done?
 3 MR. JONES: Object to form and
 4 foundation.
 5 A. Correct, I don't know what I would have done.
 6 Q. Mr. Jones mentioned that -- strike that.
 7 The operating losses that you
 8 testified were projected for AIHG for some
 9 period of time, whether or not the actual
 10 losses that happened turned out to be worse
 11 than the projected losses numerically, was that
 12 something that you assumed that AIHG and its
 13 board kept track of?
 14 A. I'm not sure I understand your question.
 15 Q. Okay.
 16 A. You mean the actual recording or accounting for
 17 the losses?
 18 Q. No. I mean the -- let me just rephrase the
 19 question.
 20 You knew generally that there were
 21 operating losses that were projected for some
 22 period of time for the AIHG practices; right?
 23 A. Yes.
 24 Q. Okay. And did you know that there were
 25 specific budgeted projections of how much those

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1 losses would be from year to year?
 2 A. I believe I did at the time, yes.
 3 Q. And did somebody keep track of whether the
 4 actual losses incurred were worse than those --
 5 A. Yes.
 6 Q. -- budgeted projected losses?
 7 A. Yes.
 8 Q. And was that AIHG that did that?
 9 A. For sure AIHG and maybe the AHERF management as
 10 well.
 11 Q. But do you remember the AHERF board itself when
 12 you were a trustee keeping track of that?
 13 A. I don't remember comparisons between projected
 14 losses and the actuals, no.
 15 MR. FRIESEN: I don't have any
 16 further questions.
 17 MR. JONES: I think I just have a
 18 follow-up.
 19 ----
 20 RE-EXAMINATION
 21 ----
 22 BY MR. JONES:
 23 Q. Mr. Hernandez, I'm going to take you back to
 24 the question I asked you about \$80 million
 25 operating loss in '96 and 100 million or more

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1 operating loss in '97. I want to make sure we
 2 understand each other.
 3 If you assume for a minute that you
 4 were informed by the auditors that the
 5 financial statements presented to them for
 6 audit in each of those years were overstated by
 7 those numbers approximately in each year, as a
 8 consequence of financial management failing to
 9 follow generally accepted accounting
 10 principles, would that have caused you concern?
 11 A. Yes.
 12 Q. Without question?
 13 A. Without question.
 14 Q. Because you then have to explore competence and
 15 integrity issues, am I fair -- am I right in
 16 that?
 17 A. You are.
 18 Q. And you would have done so?
 19 A. I believe I would have.
 20 MR. JONES: That's all I have.
 21 MR. FRIESEN: Thanks a lot.
 22 THE VIDEOGRAPHER: If there are no
 23 further questions, this deposition is
 24 concluded. We are now going off the record.
 25 The time is 3:45 --

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1 MR. FRIESEN: Ken, Ken, wait, counsel
 2 wants to say something.
 3 MR. RESTIVO: We don't waive
 4 signature. We want to review the transcript
 5 and sign it. We don't waive signature.
 6 THE VIDEOGRAPHER: With no further
 7 questions this deposition is concluded. We are
 8 now going off the record. The time is 3:46
 9 p.m.
 10 ----
 11 (The proceedings were concluded at 3:46 p.m.)
 12 ----
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1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE

2 COUNTY OF ALLEGHENY) SS:

3 I, Heidi H. Willis, RPR, CRR, a Court Reporter
 4 and Notary Public in and for the Commonwealth of
 5 Pennsylvania, do hereby certify that the witness,
 6 ROBERT M. HERNANDEZ, was by me first duly sworn to
 7 testify to the truth; that the foregoing deposition
 8 was taken at the time and place stated herein; and
 9 that the said deposition was recorded
 10 stenographically by me and then reduced to printing
 11 under my direction, and constitutes a true record of
 12 the testimony given by said witness.

13 I further certify that the inspection, reading
 14 and signing of said deposition were NOT waived by
 15 counsel for the respective parties and by the
 16 witness.

17 I further certify that I am not a relative or
 18 employee of any of the parties, or a relative or
 19 employee of either counsel, and that I am in no way
 20 interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
 22 and affixed my seal of office this 8th day of
 23 September, 2003.

24 _____
 25 Notary Public

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1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
 2 COUNTY OF ALLEGHENY) S H E E T

3 I, Robert M. Hernandez, have read the foregoing
 4 pages of my deposition given on Wednesday, September
 5 3, 2003, and wish to make the following, if any,
 6 amendments, additions, deletions or corrections:
 7 Page/Line Should Read Reason for Change

8
 9
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 14
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 16
 17
 18
 19
 20 In all other respects, the transcript is true and
 21 correct.

22 _____
 23 ROBERT M. HERNANDEZ

24 Subscribed and sworn to before me this
 25 _____ day of _____, 2003.

 Notary Public
 AKF Reference No. HW77081

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1 AKF REPORTERS, INC.
 2 AKF Building
 3 436 Boulevard of the Allies
 4 Pittsburgh, PA 15219
 5 (412) 261-2323

September 8, 2003

TO: James J. Restivo, Jr., Esq.

7 RE: DEPOSITION OF ROBERT M. HERNANDEZ
 8 NOTICE OF NON-WAIVER OF SIGNATURE
 9 Please have the deponent read his deposition
 10 transcript. All corrections are to be noted on the
 11 preceding Errata Sheet.

12 Upon completion of the above, the Deponent must
 13 affix his signature on the Errata Sheet, and it is to
 14 then be notarized.

15 Please forward the signed original of the
 16 Errata Sheet to Jeffrey Friesen, Esq., for attachment
 17 to the original transcript, which is in his
 18 possession. Send a copy of same to all counsel, and
 19 also a copy to me.

20 Please return the completed Errata Sheet within
 21 thirty (30) days of receipt hereof.

22
 23 Heidi H. Willis, RPR, CRR
 24 Court Reporter
 25

Hilton Dep.

In The Matter Of:

***AHERF v.
PRICEWATERHOUSECOOPERS, L.L.P.***

***GRAEMER HILTON
August 13, 2003***

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1 Because they were making --
 2 Again, time frame is difficult, but
 3 they were making changes in the management of
 4 certain areas of the hospital.
 5 Q. Okay. So by the end of fiscal '96, though, you
 6 did have concerns about the financial and
 7 operating position of AHERF?
 8 A. Yes.
 9 Q. And do you recall whether or not your concerns
 10 were shared by other members of the boards of
 11 committees on which you served?
 12 MR. JONES: Object to foundation.
 13 THE WITNESS: Yes. I'm sure they
 14 were.
 15 BY MR. McDONOUGH:
 16 Q. Now, before we leave this page, or this
 17 exhibit, Mr. Hilton, you indicated in one of
 18 your answers that \$42 million of increased debt
 19 would be about two and a half percent of a
 20 \$1.6 billion organization.
 21 A. If my arithmetic is correct.
 22 Q. It sounds like it is to me. And I just want to
 23 focus in on that. Were you attempting to say
 24 that two and a half percent is a number that
 25 should cause major concern or that two and a

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1 half percent is a more manageable or more -- or
 2 less material number?
 3 MR. JONES: Object to form.
 4 THE WITNESS: I would --
 5 You know, I would hope it would be
 6 less material.
 7 MR. McDONOUGH: Let me show you
 8 next -- I'm sorry. You can put that aside --
 9 what has been marked as Exhibit 1676.
 10 ----
 11 (Deposition Exhibit No. 1676
 12 previously marked for identification.)
 13 ----
 14 BY MR. McDONOUGH:
 15 Q. Mr. Hilton, this is a previously marked exhibit
 16 which is minutes of an audit committee meeting
 17 held on October 15th of 1996. Do you see that?
 18 A. Yes.
 19 Q. And to state the obvious, October 15th of 1996
 20 would have been in fiscal year 1996. Correct?
 21 A. Correct.
 22 Q. And you're shown as being present on the
 23 document. Correct?
 24 A. Correct.
 25 Q. Under the members of the committee present for

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1 the meeting.
 2 A. Right.
 3 Q. Did you receive as a matter of routine minutes
 4 for the committee meetings and the board
 5 meetings which you attended?
 6 A. Yes.
 7 Q. Did you ever notice a circumstance where you
 8 were indicated as present when you weren't or
 9 absent -- I'm sorry, you're absent when you
 10 were --
 11 A. No.
 12 Q. So is it fair to say you found the minutes that
 13 you received to be accurate in terms of
 14 reflecting whether you were present for a
 15 meeting or not?
 16 A. Correct.
 17 MR. JONES: I object to form.
 18 MR. McDONOUGH: And you know what? I
 19 misstated my prior question.
 20 BY MR. McDONOUGH:
 21 Q. October of 1996 would have actually been in
 22 fiscal '97. Is that correct?
 23 I get confused about this. Let me
 24 make the record clear.
 25 The fiscal year for AHERF was July 1

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1 to June 30. Correct?
 2 A. Correct.
 3 Q. So fiscal year 1996 would have ended on June 30
 4 of 1996?
 5 A. Seven -- or '96. Yes.
 6 Q. So, therefore, October of '96 then would be in
 7 the next fiscal year which would end June 30th,
 8 1997, and that would be fiscal '97.
 9 A. Right.
 10 Q. So just to put this in context then, this
 11 meeting would have occurred after the
 12 operations or after the results of financial
 13 operations for AHERF in the '94, '95, and '96
 14 time frame that we just looked at.
 15 A. Correct.
 16 MR. McCLENAHAN: Are you going to be
 17 asking this witness questions about this
 18 document? If you are, I think he should take
 19 the time to read it.
 20 MR. McDONOUGH: Take a moment to page
 21 through it. I'm just going to ask you about
 22 one or two specific things.
 23 ----
 24 (The witness reviewed the document.)
 25 ----

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1 -----
 2 EXAMINATION
 3 -----
 4 BY MR. JONES:
 5 Q. Mr. Hilton, my name, again, is Jim Jones. I'm
 6 going to ask you, I think, a relative few
 7 questions here this afternoon; and if we could
 8 have the same agreement you had with
 9 Mr. McDonough, and that is if I have asked you
 10 something you don't understand or if my
 11 question is unclear to you, if you'll tell me,
 12 I'll do my best to clear it up.
 13 Can we have that agreement?
 14 A. Yes.
 15 Q. Thank you. You were asked to talk briefly
 16 about in your testimony earlier today your role
 17 on the audit committee.
 18 I'd like to ask you a few questions
 19 about your perceptions of the role of the
 20 independent auditors, Coopers & Lybrand, as it
 21 related to their work for AHERF during the
 22 fiscal years you were involved on the audit
 23 committee.
 24 Could you explain for me what you
 25 perceived the role of Coopers & Lybrand to be

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1 in the process?
 2 A. Well, to certainly review the operations of the
 3 hospitals, the financials, and make
 4 recommendations, report back to the audit
 5 committee.
 6 Q. As a part of that review, were they to give an
 7 opinion on the accuracy of the financial
 8 statements?
 9 A. Yes.
 10 Q. And why did you want that as a part of your
 11 work as an audit committee or finance committee
 12 member?
 13 A. What's the question again?
 14 Q. Why is it that you wanted the annual opinion
 15 with respect to the financial statements?
 16 A. Well, to support, you know, what was being
 17 reported by management.
 18 Q. And it was, in part, to receive an independent
 19 opinion?
 20 A. Correct.
 21 Q. And it's a check or a monitor on management's
 22 own recording. Is that fair to say?
 23 A. Yes.
 24 Q. And it's a check or a monitoring process that
 25 has been a part of your work on the boards of

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1 other public companies?
 2 A. Correct.
 3 Q. And as a part of your work as a part of
 4 management of other companies.
 5 A. Right.
 6 Q. Are there others who review audited financial
 7 statements outside of the audit committee and
 8 the board of trustees of AHERF, as you
 9 understood it? Were there others, as you
 10 understood it, during your time on the audit
 11 committee?
 12 A. Not outside the committee or the board.
 13 Q. Were there third parties, however, that weren't
 14 affiliated with AHERF that would review these
 15 audited financial statements, to your
 16 knowledge?
 17 A. Not to my knowledge.
 18 Q. Let me ask you this. Are you aware that the
 19 creditors of the enterprise would ask for and
 20 receive and review audited financial statements
 21 from time to time from AHERF?
 22 A. Creditors of AHERF? I would expect, yes.
 23 Q. Are you aware of other parties besides
 24 creditors?
 25 A. I can't recall any.

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1 Q. What about lending enterprises, financial
 2 institutions?
 3 MR. McDONOUGH: Well, I object to
 4 form. They would be creditors.
 5 MR. JONES: They may.
 6 THE WITNESS: I would expect, sure.
 7 MR. McCLENAHAN: Depends on whether
 8 they lend them money, I guess.
 9 THE WITNESS: Right.
 10 MR. JONES: In fact, those that may
 11 make decisions about whether or not to lend
 12 might ask for, and in your experience, asked
 13 for and received audited financial statements
 14 of AHERF enterprises?
 15 THE WITNESS: Sure.
 16 MR. McDONOUGH: Object to form.
 17 BY MR. JONES:
 18 Q. During your time on the audit committee, did
 19 you rely on Coopers & Lybrand to inform you of
 20 whether or not the financial statements were
 21 fairly stated?
 22 A. Yes.
 23 Q. And you relied so throughout your time on the
 24 audit and finance committees?
 25 A. Yes.

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<p>1 Q. And you expected them to bring to your 2 attention material misstatements in those 3 financial statements? 4 MR. McDONOUGH: Object to the form. 5 THE WITNESS: Yes. 6 BY MR. JONES: 7 Q. And as a part of some of the challenging times 8 in the health care market that Mr. McDonough 9 and you discussed as a part of your earlier 10 testimony, you used the audited financial 11 statements to help you monitor AHERF's 12 performance in that challenging market. Is 13 that fair to say? 14 A. Yes. 15 Q. And you based decisions that you were called 16 upon to make in your board memberships in part 17 on those audited financial statements and the 18 financial performance they revealed. 19 A. Correct. 20 Q. If those statements were proven incorrect 21 materially so, those decisions you made might 22 have varied. 23 MR. McDONOUGH: I object to form 24 twice. Go ahead. 25 THE WITNESS: Well, that's difficult</p>	<p>1 service, do you recall inviting the independent 2 auditors, Coopers & Lybrand, to visit with the 3 audit committee, meet with the audit committee, 4 in executive session? 5 A. Yes. 6 Q. And you offered that at every meeting? 7 A. Every meeting. 8 Q. And do you ever recall Mr. Buettner or anyone 9 else on behalf of Coopers & Lybrand taking you 10 up on that invitation? 11 A. I don't recall, no. 12 Q. And what is the reason for offering executive 13 session with the auditors? 14 A. Well, to point out any deficiency or concerns 15 that they would suggest we take a look at, 16 either that they would run across during the 17 course of their audit -- 18 Q. The things they perceived that needed 19 improvement or were incorrect? 20 A. Right. 21 Q. And it allowed you to visit with the auditors 22 outside the presence of management? 23 A. Correct. 24 Q. And to forego any embarrassment or conflict 25 that might result from an all-hands meeting.</p>
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<p>1 to say only from the standpoint how would you 2 know they were wrong. 3 BY MR. JONES: 4 Q. Well, if it was revealed to you that they were. 5 A. By whom? 6 Q. By the auditors, for instance, that the 7 internal financial statements were wrong in one 8 aspect or another? 9 A. The internal financial -- 10 Q. Yes. 11 A. Of AHERF? 12 Q. Let me start again. If it was revealed to you 13 as an audit committee member by the independent 14 auditors, Coopers & Lybrand, that the financial 15 statements presented to them for audit were, in 16 fact, materially incorrect -- 17 A. Uh-huh. 18 Q. -- that might have an effect on the decisions 19 you make as a part of the committees that you 20 were a part of in your trustee service? 21 A. Yes. 22 MR. McDONOUGH: Object to form. 23 BY MR. JONES: 24 Q. Do you ever recall -- strike that. 25 As a part of your audit committee</p>	<p>1 Is that fair to say? 2 A. Yes. 3 Q. At the annual fall audit meetings, you were 4 presented sometimes I think we've established 5 shortly in advance of the meeting with the 6 audited financial statements for the fiscal 7 year that had ended that June. Is that 8 correct? 9 A. Correct. 10 Q. And in connection with those meetings, you 11 would review the statements typically before 12 the meeting and spend some time with them. Is 13 that right? 14 A. Yes. 15 Q. And then review them again with the committee 16 and the auditors? 17 A. Correct. 18 Q. At the meeting? 19 A. Correct. 20 Q. I'm going to hand you, Mr. Hilton, what has 21 been previously marked as Exhibit 1001, fiscal 22 year 1996 audited financial statements. 23 ---- 24 (Deposition Exhibit No. 1001 25 previously marked for identification.)</p>

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<p>1 - - - -</p> <p>2 MR. McCLENAHAN: Do you have a copy I</p> <p>3 could --</p> <p>4 MR. JONES: Yeah.</p> <p>5 - - - -</p> <p>6 (The witness reviewed the document.)</p> <p>7 - - - -</p> <p>8 BY MR. JONES:</p> <p>9 Q. You've looked at a set of these financial</p> <p>10 statements earlier today, perhaps under a</p> <p>11 different exhibit number with Mr. McDonough,</p> <p>12 but you recall receiving in advance of the '96</p> <p>13 fall audit committee meeting a set of the</p> <p>14 audited financial statements for AHERF. Is</p> <p>15 that fair to say?</p> <p>16 A. Yes.</p> <p>17 Q. And I'm going to ask you to take a look at a</p> <p>18 number that I don't think he did ask you to</p> <p>19 take a look at, and that is found at Page 3 of</p> <p>20 the financial statements that ends with a Bates</p> <p>21 number 579.</p> <p>22 A. Right.</p> <p>23 Q. Do you see there, Mr. Hilton, about halfway</p> <p>24 down the page where there is an item for net</p> <p>25 income before extraordinary items --</p>	<p>1 and you have that before you, sir?</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to ask you to look at a couple</p> <p>4 sentences in that management letter that you</p> <p>5 received in connection with the fiscal year-end</p> <p>6 '96 financial statements that you weren't asked</p> <p>7 to look at earlier today.</p> <p>8 MR. McCLENAHAN: Will you tell us</p> <p>9 what page?</p> <p>10 MR. JONES: I plan to. It is</p> <p>11 Page 201 or Page 17 up in the upper left-hand</p> <p>12 corner under revenue and accounts receivable</p> <p>13 overview.</p> <p>14 Are you with me?</p> <p>15 THE WITNESS: Yes.</p> <p>16 - - - -</p> <p>17 (The witness reviewed the document.)</p> <p>18 - - - -</p> <p>19 MR. JONES: Mr. McDonough asked you</p> <p>20 if you had read certain portions of this</p> <p>21 management letter, and I'd like to direct your</p> <p>22 attention to a portion that you were not asked</p> <p>23 to see or to review, and that is the</p> <p>24 second-to-the-last paragraph.</p> <p>25 Would you go ahead and read that to</p>
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<p>1 extraordinary item and change in accounting</p> <p>2 principles?</p> <p>3 A. Right.</p> <p>4 Q. There we see a figure of \$6.5 million or a</p> <p>5 little more than that. Right?</p> <p>6 A. Correct.</p> <p>7 Q. So, in fact, does it meet with your</p> <p>8 recollection that the fiscal year consolidated</p> <p>9 performance of AHERF on an operating basis was</p> <p>10 before an extraordinary item and change in</p> <p>11 accounting principles, a positive number?</p> <p>12 A. Check.</p> <p>13 Q. Is that a yes?</p> <p>14 A. Yes.</p> <p>15 Q. Thank you. And, therefore, that would have</p> <p>16 been an improvement from the fiscal year before</p> <p>17 1995. Is that fair to say?</p> <p>18 A. Yes.</p> <p>19 Q. I'm going to ask you now to take a look at the</p> <p>20 audit committee letter -- or, rather, the</p> <p>21 management letter that accompanied --</p> <p>22 I think there were a few of those</p> <p>23 financial statements, and that is found at</p> <p>24 Exhibit 168 that Mr. McDonough asked you to</p> <p>25 look at, the board package of October 15, 1996,</p>	<p>1 yourself.</p> <p>2 THE WITNESS: Yes.</p> <p>3 - - - -</p> <p>4 (The witness reviewed the document.)</p> <p>5 - - - -</p> <p>6 BY MR. JONES:</p> <p>7 Q. You see there that Coopers & Lybrand is</p> <p>8 informing the board of trustees that, and I</p> <p>9 quote, as a result of our procedures, we have</p> <p>10 concluded that the controls over the</p> <p>11 establishment and monitoring of accounts</p> <p>12 receivable reserves are designed appropriately</p> <p>13 and are operating effectively so as to properly</p> <p>14 adjust accounts receivable balances to their</p> <p>15 estimated net realizable value.</p> <p>16 Do you see that language?</p> <p>17 A. Yes.</p> <p>18 Q. And that was language that you would have read</p> <p>19 at the time?</p> <p>20 A. Yes.</p> <p>21 Q. And that is language in which you would have</p> <p>22 taken some comfort at the time?</p> <p>23 A. Yes.</p> <p>24 Q. And, in fact, this language is different than</p> <p>25 the language you were shown in the 1995</p>

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<p>1 Q. And \$40 million numbers, regardless of where 2 they appeared on the financial statements, 3 would those be numbers significant enough for 4 you to want to pay attention to them? 5 A. Correct. 6 Q. You certainly wouldn't ignore them? 7 A. That's right. 8 Q. And a \$40 million change in accounts 9 receivable, would that have been significant to 10 you, given its role in core earnings? 11 A. Yes. 12 Q. For a given year? 13 A. Yes. 14 Q. Did you ever meet anyone else from the 15 Coopers & Lybrand audit team other than 16 Mr. Buettner in connection with your work at 17 AHERF? 18 A. Prior to Bill becoming the engagement partner, 19 when I first went on the board of Allegheny 20 General Hospital, there was another gentleman, 21 I don't recall his name, that was the 22 engagement partner; and then generally there 23 was at least one or two others that worked with 24 either one of those two gentlemen. 25 Q. Do you recall the names of any of these</p>	<p>1 expense reduction expenses earlier if the 2 financial operating results had revealed them 3 to be necessary? 4 MR. McDONOUGH: Object to form. 5 THE WITNESS: I couldn't answer that. 6 I don't know. 7 MR. JONES: If the same financial 8 results obtained or -- same or similar -- would 9 you have expected similar reductions or efforts 10 in a prior year? 11 MR. McDONOUGH: Same objection. 12 Asked and answered. 13 THE WITNESS: There would certainly 14 be efforts, but beyond that, I 15 couldn't conjecture. 16 MR. JONES: There would be efforts; 17 you just don't know all the detail? 18 MR. McDONOUGH: No. He said it would 19 be conjecture. Don't answer his questions for 20 him. 21 MR. JONES: I'm asking a new 22 question. 23 MR. McDONOUGH: No. You were 24 interrupting his answer. Please proceed. 25 MR. JONES: I will proceed.</p>
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<p>1 individuals? 2 A. No, I don't. 3 Q. Did you ever meet Mr. Mark Kirstein or 4 Kirstein? 5 A. It doesn't ring a bell. Was he the engagement 6 partner before? 7 Q. I do not frankly believe he was the engagement 8 partner before Mr. Buettner. I do not know. 9 A. I don't know. 10 Q. Did you ever meet a woman named Amy Frazier 11 from Coopers & Lybrand? 12 A. I don't remember the name, but there was a 13 young lady as a part of the team. 14 Q. Do you recall her being involved in the early 15 '90s or the late '90s? 16 A. I thought it was the latter. 17 Q. You talked with Mr. McDonough a little bit 18 about some steps that AHERF apparently took in 19 the fall of calendar year 1997 and perhaps 20 later to reduce expenses, including some 21 layoffs. Do you remember seeing the press 22 clippings? 23 A. Yes, 1,200. 24 Q. As you sit here today, do you have any reason 25 to doubt that AHERF would have taken similar</p>	<p>1 THE WITNESS: I'm saying I wouldn't 2 conjecture. 3 MR. JONES: I'm not asking you to 4 conjecture for me at all. I'm asking you to do 5 what you did, and I believe I heard you right. 6 You believe there would be efforts in a prior 7 year. 8 MR. McDONOUGH: Objection. 9 THE WITNESS: Right. 10 MR. JONES: And what you can't tell 11 me are the specifics of them. Right? 12 THE WITNESS: Yes. 13 MR. JONES: Thank you. 14 BY MR. JONES: 15 Q. Do you know who proposed the severance 16 arrangements or the separation arrangements for 17 Mr. Abdelhak that you apparently were recording 18 in your notes shown to you earlier today? 19 A. I thought about that afterwards, and I'm not 20 sure. As I recall now, it's by what I said 21 before. I think that those numbers were the 22 ones that Abdelhak was trying to get, that he 23 had proposed and sent to -- sent to the law 24 firm, maybe. I'm not sure. And -- 25 But, as I recall, he didn't get</p>

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1 anything.
 2 Q. In the end, you don't recall that he received
 3 any compensation?
 4 A. Correct.
 5 Q. Mr. Hilton, did anyone from Coopers & Lybrand,
 6 Mr. Buettner or anyone else, ever raise with
 7 you any question about the competence of anyone
 8 in financial management or executive management
 9 at AHERF?
 10 A. No.
 11 Q. Did Mr. Buettner or anyone else at
 12 Coopers & Lybrand ever raise with you their
 13 belief that there was questionable integrity on
 14 the part of anyone in financial management or
 15 executive management at any AHERF enterprise?
 16 A. No.
 17 Q. If they had such feelings or suspicions, would
 18 you expect them to raise that with you?
 19 A. Yes.
 20 Q. During your time on board service or committee
 21 service at AHERF, did you ever have reason or
 22 remember yourself questioning the accuracy of
 23 the 1996 or 1997 audited financial statements?
 24 A. No.
 25 Q. Do you recall ever questioning the accuracy of

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1 any of the internal financial statements that
 2 you received during your board or committee
 3 service at AHERF?
 4 A. No.
 5 Q. Were you ever informed that those internal
 6 statements were in any way wrong?
 7 A. No.
 8 Q. Who were -- strike that.
 9 Who was the committee chair for the
 10 audit committee in the years 1995, '96, and
 11 '97?
 12 A. Dave Barnes.
 13 Q. And do you recall who the finance committee
 14 chair was during that same time period?
 15 A. I think he was for a period of time.
 16 Q. And did you, as a part of your board service or
 17 committee service, look to him for leadership?
 18 A. Yes.
 19 Q. Were there others on the audit committee or
 20 finance committee that you looked to for
 21 leadership in these matters?
 22 A. I believe Fran Nimick who had been a board
 23 member for years before I was on the board, and
 24 I believe had been chairman of the finance
 25 committee at one time, both in a leadership

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1 kind of role.
 2 Q. Anyone else come to mind?
 3 A. Well, yeah. Initially Bruce Thomas was on the
 4 audit committee, and he was vice chairman of
 5 U.S. Steel and chief financial officer there,
 6 and he was an active participant.
 7 Q. During your time on the audit and finance
 8 committees and then your other board service,
 9 did you expect Coopers & Lybrand to bring to
 10 your attention any material misstatements in
 11 any of the financial statements they reviewed?
 12 A. Yes.
 13 MR. JONES: Let's go off the record
 14 here briefly, and I think I'll conclude fairly
 15 shortly.
 16 THE VIDEOGRAPHER: We're now going
 17 off the record. The time is 4:10 P.M.
 18 - - - -
 19 (There was a recess in the proceedings.)
 20 - - - -
 21 THE VIDEOGRAPHER: We are now going
 22 back on the record. The time is 4:16 P.M.
 23 BY MR. JONES:
 24 Q. Mr. Hilton, were you involved at all -- let me
 25 try that one again.

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1 Mr. Hilton, do you recall learning at
 2 some time after the bankruptcy petition was
 3 filed that AHERF separated ways with
 4 Coopers & Lybrand as its auditors?
 5 A. I didn't recall that, no.
 6 Q. As we sit here today, did you ever know that to
 7 be the case?
 8 A. Yes. I learned about it.
 9 Q. When did you first learn about it?
 10 A. Gee, I don't remember.
 11 Q. Was your board and committee service over
 12 before that decision had been made?
 13 A. I don't know when the decision was made.
 14 Q. Let me suggest to you that there are minutes
 15 that reflect the board -- that the
 16 recommendation at least was made to the board
 17 in the August-September '98 time frame. Was
 18 your board service over by then?
 19 A. Probably I was still on the board, yes, but I
 20 don't recall --
 21 Q. Still on the AGH board and the audit and
 22 finance committees?
 23 A. Yes.
 24 Q. Do you recall having any input into that
 25 decision?

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I looked down at the file, and it had a couple little initials there that it was apparently, as I recall, something that Abdelhak's lawyers worked up and presented to be looked at.

Q. Okay.

A. But it didn't come to me when you first asked me about it, because --

As I recall, he didn't get anything.

MR. McCLENAHAN: Thank you. That's all I have.

THE VIDEOGRAPHER: If there are no further questions, this deposition is concluded. We are now going off the record. The time is 4:27 P.M.

(There was a discussion off the record.)

MR. McCLENAHAN: We need something for the witness to read, because we're not going to waive signature.

(The proceedings were recessed at 4:27 p.m.)

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COMMONWEALTH OF PENNSYLVANIA) ERRATA
COUNTY OF ALLEGHENY) SHEET

I, GRAEMER HILTON, have read the foregoing pages of my deposition given on Wednesday, August 13, 2003, and wish to make the following, if any, amendments, additions, deletions or corrections:

Page/Line	Should Read	Reason for Change
6		
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In all other respects, the transcript is true and correct.

GRAEMER HILTON

Subscribed and sworn to before me this _____ day of _____, 2003.

Notary Public
AKF Reference No. Gd76784

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COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE
COUNTY OF ALLEGHENY) SS:

I, G. Donavich, RPR, CRR, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, GRAEMER HILTON, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was recorded stenographically by me and then reduced to printing under my direction, and constitutes a true record of the testimony given by said witness.

I further certify that I am not a relative or employee of any of the parties, or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 14th day of August, 2003.

Notary Public

Kasperbauer Dep.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

Defendant.

Civil Action
Case No. No. 00-684

VIDEOGRAPHER: Dave Perdaris, Legal Video

Dwight Kasperbauer

<p style="text-align: right;">Page 14</p> <p>1 policies, programs, and practices assuring</p> <p>2 consistency with organizational strategies and</p> <p>3 imperatives. Managed employment, labor and</p> <p>4 employee relations, compensation & benefits,</p> <p>5 training and development, organizational</p> <p>6 development, human resource information systems,</p> <p>7 and regulatory compliance."</p> <p>8 Is that a fair statement of the activities or</p> <p>9 some of the activities you were responsible for?</p> <p>10 A. Yes, it is.</p> <p>11 Q. Okay. In July of 1999 you left AHERF. What</p> <p>12 precipitated your departure from AHERF?</p> <p>13 A. Essentially, the bankruptcy Judge McCulla</p> <p>14 (phonetic), Judge McCulla determined that neither</p> <p>15 my services nor the services of Joe Dionisio, the</p> <p>16 Chief Financial Officer, or Anthony Sanzo, the</p> <p>17 Chief Executive Officer, were necessary.</p> <p>18 Q. Okay.</p> <p>19 A. And our employment wasn't continued with the</p> <p>20 successor organization.</p> <p>21 Q. After you left AHERF, what was your next employment</p> <p>22 position?</p> <p>23 A. For a period of time I did some consulting work</p> <p>24 that doesn't appear on the resume, some small</p> <p>25 consulting assignments. I subsequently joined a</p>	<p style="text-align: right;">Page 16</p> <p>1 time where I did consulting services, and it was of</p> <p>2 insignificant nature to put on a resume.</p> <p>3 Q. Okay.</p> <p>4 A. But otherwise it's a chronology of my employment.</p> <p>5 Q. Okay. If you could walk me through your AHERF</p> <p>6 employment. When you started at AGH in 1984, who</p> <p>7 did you directly report to?</p> <p>8 A. Reported to a gentleman by the name of David</p> <p>9 Campbell.</p> <p>10 Q. And what was --</p> <p>11 A. He was the president of the hospital.</p> <p>12 Q. Okay. Did you report to him continuously through</p> <p>13 1989?</p> <p>14 A. No. I don't recall specifically when David</p> <p>15 Campbell left, but at about that time I started</p> <p>16 reporting to Sherif Abdelhak. Must have been in</p> <p>17 '86, early '87 when that change occurred.</p> <p>18 Q. Other than Sherif Abdelhak, did you report to</p> <p>19 anyone else, directly report to anyone else between</p> <p>20 1986 and 1987 and the end of your tenure at AHERF?</p> <p>21 A. Well I reported to him until the time that he was</p> <p>22 fired.</p> <p>23 Q. Okay. In mid 1998?</p> <p>24 A. In May of '98.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 15</p> <p>1 company called Mid Atlantic Medical Services in</p> <p>2 Roanoke, Virginia as an account executive.</p> <p>3 Essentially, a marketing role for managed care</p> <p>4 plans, group insurance, group health insurance</p> <p>5 programs.</p> <p>6 Q. After you left Mid Atlantic, what was your next</p> <p>7 employment position?</p> <p>8 A. I became VP of Human Resources for the University</p> <p>9 of Kansas Hospital in Kansas City, Kansas. That</p> <p>10 was in June of 2000.</p> <p>11 Q. Okay.</p> <p>12 A. Or 2002. I'm sorry.</p> <p>13 Q. Okay. And just so I'm clear, you worked for Mid</p> <p>14 Atlantic Medical Services, Incorporated from 2000</p> <p>15 to 2002?</p> <p>16 A. Approximately two years, yes.</p> <p>17 Q. Okay. And you're currently employed by the</p> <p>18 University of Kansas?</p> <p>19 A. University of Kansas Hospital.</p> <p>20 Q. Hospital, okay.</p> <p>21 If I could ask you to take one final look at</p> <p>22 your resume, and my question to you is: Is there</p> <p>23 anything, as you sit here today, that you believe</p> <p>24 is inaccurately stated on your resume?</p> <p>25 A. No. The only thing that I pointed out is a gap of</p>	<p style="text-align: right;">Page 17</p> <p>1 A. June of '98.</p> <p>2 Q. Okay. During, between '86 and '98, did you report</p> <p>3 directly to any other executive at AHERF?</p> <p>4 A. No, I only reported to Sherif.</p> <p>5 Q. Okay. How many people directly reported to you</p> <p>6 between 1984 and 1989 would you say?</p> <p>7 A. At the peak of the size of the organization, there</p> <p>8 were approximately a hundred and 50 people that</p> <p>9 were in the Human Resources organization that</p> <p>10 reported up to me.</p> <p>11 Q. Okay.</p> <p>12 A. Direct reports were somewhere between five and six.</p> <p>13 Q. Okay. Can you identify who your direct reports</p> <p>14 were at the peak of AHERF's size?</p> <p>15 A. Sure. Maria Randall was responsible for corporate</p> <p>16 compensation and benefits. It's terrible, I don't</p> <p>17 remember the gentleman's name, but there was a</p> <p>18 gentleman responsible for Human Resource</p> <p>19 Information Systems. I'll think of it later. He</p> <p>20 worked for me for a short period of time.</p> <p>21 Q. Okay.</p> <p>22 A. Keith Allen was the vice president of Human</p> <p>23 Resources for Allegheny General Hospital. Frank</p> <p>24 Ross, Rossy was the VP of Human Resources for</p> <p>25 Forbes Health System. Bill Crider (phonetic) was</p>

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<p style="text-align: right;">Page 18</p> <p>1 the VP for Philadelphia Hospitals. And Angelia 2 Francheska was the VP for Academic Human Resources. 3 Q. I've seen the name David Deasy. Was he one of your 4 direct reports? 5 A. No, he was not. David was responsible for payroll, 6 and he reported through the finance part of the 7 organization. 8 Q. Okay. So he never reported in any direct or 9 indirect way to you? 10 A. No, not at all. 11 Q. Okay. Other than the five individuals that you 12 just identified as your direct reports, can you 13 think of anyone else who was a direct report of 14 yours between -- 15 A. Kathy Simon was my administrative assistant. 16 Q. Okay. Anyone else you can think of? 17 A. No, not that I recall. 18 Q. Okay. 19 20 (Document was marked Deposition 21 Exhibit Number 2460 for identification.) 22 23 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you 24 what has been marked as Exhibit 2460. I'll give 25 you a chance to take a look at this. My first</p>	<p style="text-align: right;">Page 20</p> <p>1 Compensation Program? I'm not asking for specific 2 names but... 3 A. Oh, I'm sorry. 4 Q. I'm thinking more of job titles or levels. 5 A. Essentially, vice president and above. Also, at 6 the time we were involved with the academics part 7 of the university, the department chairs. Their 8 compensation was overseen by the committee as well. 9 Q. What was the most number of participants in the 10 Executive Compensation Program at any given time? 11 A. I would say probably a hundred plus. 12 Q. What was your connection to the Compensation 13 Committee? 14 A. I provided staff support to the committee. 15 Q. And what was the purpose of providing a committee 16 with staff support? Why was that necessary? 17 A. Assembling information and reports for them in 18 order to make decisions. Providing them with the 19 record of compensation, what people earned in terms 20 of base salary. Putting together for them for 21 consideration the award of incentive compensation. 22 Q. Was there any other executive at AHERF that was 23 providing that kind of support to the Compensation 24 Committee during your tenure at AHERF, let's say 25 between '89 and '99?</p>
<p style="text-align: right;">Page 19</p> <p>1 question to you is going to be if you recognize 2 this document. I'll let you take a look at it 3 first. 4 A. Yes, I recognize it. 5 Q. Can you identify for it for me? 6 A. It is the minutes of the Compensation Committee of 7 AHERF for a meeting held on October 4th, 1993. 8 Q. Okay. What was the Compensation Committee of 9 AHERF? 10 A. It was a, I believe a subcommittee of the Board 11 made up of Board members. Their names are listed 12 on the document. David Barns, Doug Danforth, 13 Graemer Hilton, Francis Nimick and William B. 14 Snyder the third. 15 Q. What was the function of the Compensation Committee 16 of the AHERF Board of Trustees? 17 A. They oversaw the Executive Compensation Program and 18 they oversaw general compensation policy in the 19 organization. 20 Q. What was the Executive Compensation Program? 21 A. It was composed of a Base Salary Program, an Annual 22 Incentive Program, Long-Term Incentive Program, and 23 an Executive Benefit Program. 24 Q. What employees or executives at AHERF were governed 25 or were members or participants in the Executive</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Not that I'm aware of. 2 Q. Okay. Why is it that -- well let me take a step 3 back. 4 This, the meeting that's referenced here in 5 Exhibit 2460, it lists you as a guest of the 6 meeting. Do you remember attending this or any 7 other Compensation Committee meeting? 8 A. I attended some of them, yes. 9 Q. What was the purpose of you attending Compensation 10 Committee meetings? 11 A. To share information or to answer questions for the 12 Compensation Committee. In some situations making 13 presentations to them regarding various programs. 14 Q. Between 1989 and 1999, were you the most 15 knowledgeable executive at AHERF about Executive 16 Compensation Programs? 17 MS. DeMASI: Objection to form. 18 A. I'm sorry, between? 19 Q. (BY MR. TAMBURRI) I'm sorry. Between 1989 and 20 1999, were you the most knowledgeable executive at 21 AHERF about Executive Compensation Programs? 22 A. I would guess so, yes. 23 Q. Why do you say that? 24 A. Because I don't know of anybody else who would have 25 been more connected with the Compensation Program</p>

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<p style="text-align: right;">Page 22</p> <p>1 other than possibly Sherif or David.</p> <p>2 Q. When you say Sherif and David, you're referring to</p> <p>3 Sherif Abdelhak --</p> <p>4 A. Sherif Abdelhak, David McConnell. And Nancy</p> <p>5 Wynstra as well. She was frequently an invited</p> <p>6 guest to the Compensation Committee meetings.</p> <p>7 Q. If you turn to -- I'm sorry, let me ask you first,</p> <p>8 do you know who prepared the minutes, these minutes</p> <p>9 that have been marked as Exhibit 2460?</p> <p>10 A. Nancy Wynstra had the responsibility for</p> <p>11 maintaining the minutes.</p> <p>12 Q. Were the minutes of the Compensation Committee</p> <p>13 meetings prepared in the ordinary course of AHERF's</p> <p>14 business, and is this an ordinary practice to</p> <p>15 record the minutes at Compensation Committee</p> <p>16 meetings?</p> <p>17 A. Yeah, that was, to my understanding, a consistent</p> <p>18 practice with all Board meetings, that we worked</p> <p>19 from an agenda and then the meeting was</p> <p>20 subsequently documented with minutes.</p> <p>21 Q. Were the minutes of the Compensation Committee</p> <p>22 meetings maintained in a file as a regular practice</p> <p>23 at AHERF?</p> <p>24 A. I assume the Legal Department did, yes.</p> <p>25 Q. Okay. Did you maintain copies of these minutes?</p>	<p style="text-align: right;">Page 24</p> <p>1 of control from those who essentially cut the</p> <p>2 paychecks and those who could direct people to cut</p> <p>3 paycheck. There was an intermediate step.</p> <p>4 Q. Okay. Who was the AHERF payroll manager?</p> <p>5 A. Dave Deasy.</p> <p>6 Q. Was this proposal, in fact, approved by the</p> <p>7 Compensation Committee?</p> <p>8 A. Yes, it was.</p> <p>9 Q. So after this was approved in 1993, were you the</p> <p>10 only executive that could direct Mr. Deasy or</p> <p>11 anyone else holding that position of payroll</p> <p>12 manager to make adjustments in compensation?</p> <p>13 A. I thought I was, until subsequent to the</p> <p>14 bankruptcy, and I learned this was not the case in</p> <p>15 all situations.</p> <p>16 Q. What do you mean by that?</p> <p>17 A. I came to find out after Sherif left that a bonus</p> <p>18 was paid to Sherif in the fall of 1998 that I</p> <p>19 wasn't aware of.</p> <p>20 Q. How did you find that out?</p> <p>21 A. I think in the course of putting together</p> <p>22 information for the, I think the Executive</p> <p>23 Committee of AHERF after Sherif separated. I don't</p> <p>24 recall specifically when that happened, but I think</p> <p>25 there was a request for, give us a report on his</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes, I did, in the department, HR Department.</p> <p>2 Q. HR Department, Okay.</p> <p>3 If you could turn to what's referenced as Page</p> <p>4 3 of the minutes in the upper left-hand corner.</p> <p>5 A. (Witness complies).</p> <p>6 Q. At the bottom it's Bates labeled JD-HL 20815. If</p> <p>7 you'd look at Paragraph 3 at the bottom of the</p> <p>8 page, there is a section there entitled "Executive</p> <p>9 Salary Controls"?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And I'll give you a chance to read that, but I'm</p> <p>12 going to ask you a question about the first</p> <p>13 sentence, which reads, "Mr. Kasperbauer presented</p> <p>14 to the Committee a management proposal, recommended</p> <p>15 to assure appropriate counting controls and</p> <p>16 segregation of duties, that only Dwight</p> <p>17 Kasperbauer, the Executive Vice President and Chief</p> <p>18 Human Resources Officer, may direct the AHERF</p> <p>19 Payroll Manager to make adjustments in</p> <p>20 compensation."</p> <p>21 Do you remember presenting to the Compensation</p> <p>22 Committee this proposal?</p> <p>23 A. Generally, yes.</p> <p>24 Q. Okay. What was the purpose of this proposal?</p> <p>25 A. As an accounting practice, to maintain separation</p>	<p style="text-align: right;">Page 25</p> <p>1 compensation, and it came to light at that point.</p> <p>2 Q. Do you know why the bonus was paid, why he received</p> <p>3 the bonus?</p> <p>4 A. Not exactly, no.</p> <p>5 Q. Okay. The proposal that's referenced here that</p> <p>6 only you would have the authority to direct the</p> <p>7 payroll manager to make adjustments in</p> <p>8 compensation, what was your understanding as to</p> <p>9 what compensation this was referring to?</p> <p>10 A. It was my understanding that it would apply to base</p> <p>11 salary and incentive compensation.</p> <p>12 Q. Okay. Would it refer to, or did it refer to the</p> <p>13 four elements of the Executive Compensation Program</p> <p>14 that you referenced earlier; that is, base salary,</p> <p>15 Annual Incentive Program, Long-Term Incentive</p> <p>16 Program and executive benefits?</p> <p>17 A. All but executive benefits.</p> <p>18 Q. Okay.</p> <p>19 A. Those would have been, generally, non cash --</p> <p>20 Q. Okay.</p> <p>21 A. -- kinds of benefits.</p> <p>22 Q. Okay. I want to ask you some questions about the</p> <p>23 different elements of the Executive Compensation</p> <p>24 Program. I'll ask you first about base salary.</p> <p>25 But let me take one step back.</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 70</p> <p>1 what's been marked as Exhibit 2469. Do you 2 recognize this document? 3 A. Yes, I do. 4 Q. Can you identify it for me? 5 A. It's a document to an insurance person verifying 6 Mr. Abdelhak's income level. 7 Q. Why were you verifying his income level for an 8 insurance company? 9 A. I believe he was attempting to acquire additional 10 life insurance, and the insurance company wanted to 11 see if there was an appropriate basis. Either that 12 or possibly a disability policy. They wanted to 13 verify a level of income. I think it was 14 disability. They're going to verify his income and 15 then pay replacement for the policy based upon 16 that. 17 Q. Did you prepare this letter in the ordinary course 18 of your practice as -- 19 A. Yes. 20 Q. -- the HR vice president? 21 A. Yes, I did. 22 Q. And you maintained a copy of this in your file as 23 was your practice? 24 A. Yes, I did. 25 Q. The information you provided to the insurance</p>	<p style="text-align: right;">Page 72</p> <p>1 A. I'm sorry, can you restate your question? 2 Q. (BY MR. TAMBURRI) I'm sorry, yeah. 3 1994 it lists -- you indicated that his income, 4 I'm sorry, was over 1.2 million? 5 A. Right. 6 Q. And his base salary for that same year was 7 \$563,000? 8 A. Uh-huh. 9 Q. Is it fair to say that he received more -- he 10 received benefits in excess of his base salary for 11 1994? 12 A. Correct, yes. 13 Q. Okay. What was Mr. Abdelhak's income for 1995? 14 A. \$1,532,492.05. 15 16 (Documents were marked Deposition 17 Exhibits Numbers 2470 and 2471 for 18 identification.) 19 20 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you 21 two exhibits. One, first, has been marked 22 Exhibit 2470, and the second has been marked 2471. 23 I'll give you a chance to look at these. 24 MS. DeMASI: Can you just confirm for us 25 which is which?</p>
<p style="text-align: right;">Page 71</p> <p>1 company regarding Mr. Abdelhak's income was 2 accurate? You don't have any reason to believe it 3 was inaccurate? 4 A. No. What I don't recall is whether it was -- it 5 must have been with all bonuses. Yeah, it was 6 accurate. 7 Q. So what this lists is Mr. Abdelhak's income for 8 1993, '94 and '95? 9 A. Correct. 10 Q. What was his income for 1993? 11 A. \$1,103,278.52. 12 Q. If you look at Exhibit 2467. I'm sorry, I'll get 13 to that in a second. 14 What was his income for 1994? 15 A. \$1,228,476.69. 16 Q. Now if you could look at Exhibit 2467. 17 A. (Witness complies). Uh-huh. 18 Q. 2467 indicates that Mr. Abdelhak's base salary for 19 '94 was \$563,000; right? Do you see that? 20 MS. DeMASI: Objection to form. 21 A. Yeah, I do. 22 Q. (BY MR. TAMBURRI) Okay. When you look at 2469, is 23 it fair to say that Mr. Abdelhak received more than 24 his base salary in benefits in 1994? 25 MS. DeMASI: Objection to form.</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. TAMBURRI: Oh, I'm sorry, yeah. 2470 2 is titled "Sherif Abdelhak - Computation of Income 3 Taxes. 4 MS. DeMASI: Got it, thanks. 5 A. Okay. 6 Q. (BY MR. TAMBURRI) Let me ask you about 2470 first. 7 Do you recognize this document? 8 A. Vaguely, yes. 9 Q. What is this document? 10 A. It appears to be a schedule prepared to, I guess, 11 look at estate taxes and death benefits. Looks 12 like schedules for some form of estate planning. 13 Q. For Mr. Abdelhak? 14 A. For Mr. Abdelhak, yes. 15 Q. Did you receive this document in the ordinary 16 course of your business at AHERF? 17 A. Yes, I would have. 18 Q. Did you keep this in your file? 19 A. Yes. 20 Q. Okay. Do you know who prepared Exhibit 2470? 21 A. I believe it was prepared by financial planners. 22 The name appears at the top of the sheet, a fax 23 reference to Lurie Besikof Lapidus. 24 MS. DeMASI: Mark, can I ask a question? 25 MR. TAMBURRI: Yes.</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 MS. DeMASI: Is this a complete document, 2 because it starts on Page 3 at the bottom, and the 3 fax is already at Page 6. 4 MR. TAMBURRI: This is all I have. 5 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, I'm not going 6 to represent to you that this is the whole 7 document. This is, I think, what I had available, 8 but let me just ask you with that preface, let me 9 just ask you, generically. In December of '96, was 10 estate planning done for Mr. Abdelhak? 11 MS. DeMASI: Objection to form. You can 12 answer. 13 A. Yes, I believe there was some estate planning done 14 at that time, yes. 15 Q. (BY MR. TAMBURRI) Who paid for the estate planning 16 that was done for Mr. Abdelhak? 17 A. I believe the organization paid for that. 18 Q. When you say that, you mean AHERF? 19 A. AHERF, uh-huh. 20 Q. How much did the estate planning cost? 21 A. I don't recall. 22 Q. Who directed -- were you involved in any way in 23 facilitating the estate planning for Mr. Abdelhak? 24 A. Yes, I was. 25 Q. What was your connection to that?</p>	<p style="text-align: right;">Page 76</p> <p>1 MS. DeMASI: Can I have the question read 2 back? I wasn't sure you were done. 3 4 (The material requested was read 5 back by the Reporter.) 6 7 MS. DeMASI: Objection to form. 8 A. I think he may have had his income tax preparation 9 reimbursed in '96. 10 Q. (BY MR. TAMBURRI) Okay. 11 A. Yeah, I believe we did that for a group of 12 executives at that time. 13 Q. Okay. And that was billed to AHERF? 14 A. I believe it was, yes. 15 Q. Okay. Who else received that service? 16 A. It would have been David McConnell, myself, I 17 believe Doctor Kaye, the senior executive people. 18 Q. Okay. If you look at 2471, Exhibit 2471. 19 A. Uh-huh. 20 Q. What is this document? 21 A. It appears to be a memorandum from a lady by the 22 name of Diane Malone, who I believe was with MCG to 23 Kirk Sherman, myself and Jeff Starbird. 24 Q. Who were -- who was Kirk Sherman? 25 A. Kirk Sherman was an attorney that provided advice</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I asked for some advice from MCG, if they knew of 2 someone who could assist the senior executive in 3 putting together a financial plan. 4 Q. Who directed you, if anyone, to be involved with 5 this estate planning? 6 A. Mr. Abdelhak requested it. 7 Q. Okay. Did he instruct you to charge the 8 organization for the planning? 9 A. No, he did not. 10 Q. Okay. How did you know that the organization 11 should be charged for it? 12 A. I didn't know that, but I believe that's what 13 happened. 14 Q. Okay. Were any other executives at AHERF provided 15 with estate planning other than Mr. Abdelhak? 16 A. Not at that time. 17 Q. How about at any other time? 18 A. There was some consideration of it in late '96 and 19 '97, and I don't believe we brought that to 20 closure. We had some additional discussions with 21 another estate planning representative. 22 Q. Okay. Were there any other financial services like 23 this that were provided to Mr. Abdelhak in any way, 24 financial planning? 25 MR. HENNING: Objection to form.</p>	<p style="text-align: right;">Page 77</p> <p>1 regarding the Executive Benefit Program, and, yeah, 2 I think that's what it -- 3 Q. He was an AHERF attorney? 4 A. No, he was not. He was counsel located in 5 Minneapolis. 6 Q. Okay. And Mr. Starbird, who was he? 7 A. I believe he was the CPA with Lurie Besikof and 8 Lapidus. 9 10 (Document was marked Deposition 11 Exhibit Number 2472 for identification. 12 13 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you 14 what's been marked as Exhibit 2472. I'll ask you 15 to turn to the second page, which is Bates labeled 16 DBR-Dk 10244. Can you identify that page of the 17 exhibit for me? 18 A. Yes. It's a letter from David McConnell to Sherif 19 Abdelhak, and it's a summary of his 1997 income for 20 income tax reporting purposes. 21 Q. And you received a copy of this document? 22 A. Yes, I did. 23 Q. You kept it in your file as it was your practice? 24 A. Yes, I did. 25 Q. What was Mr. Abdelhak's total income for 1997?</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 A. Total income or total taxable income?</p> <p>2 Q. Total income.</p> <p>3 A. \$1,837,828.03.</p> <p>4 Q. What was his base salary for 1997?</p> <p>5 A. \$904,500.</p> <p>6 Q. Beneath his base pay is a line item, "Merger Bonus"?</p> <p>7 A. Yes.</p> <p>8 Q. What was the merger bonus that he received? How</p> <p>9 much was it?</p> <p>10 A. \$150,000.</p> <p>11 Q. What was that bonus for?</p> <p>12 A. I don't know. Can't identify from here.</p> <p>13 Q. Then there is a line item right below it -- right</p> <p>14 above "Total Income", it says, "Imputed Income</p> <p>15 (House)"?</p> <p>16 A. Yes.</p> <p>17 Q. What is that a reference for?</p> <p>18 A. It's my recollection that the house that</p> <p>19 Mr. Abdelhak lived in in Sewickley was owned by</p> <p>20 AHERF, and I'm not sure of the details of the</p> <p>21 financial transaction, but he had imputed income</p> <p>22 associated with the benefit of living in that</p> <p>23 house.</p> <p>24 Q. And that imputed income for 1997 was in excess of</p> <p>25</p>	<p style="text-align: right;">Page 80</p> <p>1 A. It's a memorandum from Sherif Abdelhak to me</p> <p>2 indicating that I'm eligible or will become</p> <p>3 eligible for the Executive Loan Program at a</p> <p>4 \$2 million level.</p> <p>5 Q. That he, Mr. Abdelhak, was eligible?</p> <p>6 A. I'm sorry, Mr. Abdelhak was eligible.</p> <p>7 Q. Okay.</p> <p>8 A. Sorry.</p> <p>9 Q. Okay. And this memo is dated March 12th, '98?</p> <p>10 A. Right.</p> <p>11 Q. Do you remember receiving it around that time?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Do you maintain this in your file after you receive</p> <p>14 it?</p> <p>15 A. I would have, yes.</p> <p>16 Q. And you received it because you were the HR Vice</p> <p>17 President?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. What was the Executive Loan Program?</p> <p>20 A. I don't recall the details of it, but it was,</p> <p>21 essentially, a benefit program that the Board</p> <p>22 authorized certain key executives to obtain a bank</p> <p>23 loan, I think, in the equivalent of one time their</p> <p>24 total compensation, and that -- and that's about</p> <p>25 all I recall about that.</p>
<p style="text-align: right;">Page 79</p> <p>1 \$200,000?</p> <p>2 A. Yes.</p> <p>3 Q. Mr. Abdelhak received in excess of \$900,000 in</p> <p>4 bonuses in 1997; is that correct? Or I'm sorry, I</p> <p>5 need to rephrase.</p> <p>6 He received in excess of \$900,000 in benefits</p> <p>7 in 1997?</p> <p>8 MS. DeMASI: Objection to form.</p> <p>9 A. Yes. I clarify that, benefits and incentive</p> <p>10 compensation.</p> <p>11 Q. (BY MR. TAMBURRI) Okay. He received in excess of</p> <p>12 \$900,000 -- strike that.</p> <p>13 He received more benefits -- his benefits --</p> <p>14 the value of his benefits exceeded the value of his</p> <p>15 base pay in 1997?</p> <p>16 MS. DeMASI: Objection, form.</p> <p>17 A. His benefits and bonuses exceeded his base pay.</p> <p>18 Q. (BY MR. TAMBURRI) Okay. Okay. Sorry about that.</p> <p>19</p> <p>20 (Document was marked Deposition</p> <p>21 Exhibit Number 2473 for identification.)</p> <p>22</p> <p>23 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you</p> <p>24 what's been marked as Exhibit 2473. Can you</p> <p>25 identify this document for me?</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Okay. And Mr. Abdelhak was eligible to</p> <p>2 participate -- or he was eligible to receive a</p> <p>3 \$2 million loan in March of '98?</p> <p>4 A. Yes.</p> <p>5 Q. What was the -- first of all, who was eligible to</p> <p>6 receive an executive loan, and specifically, which</p> <p>7 individuals were eligible?</p> <p>8 A. Initially it was Mr. Abdelhak, David McConnell,</p> <p>9 Nancy Wynstra. And then eligibility was later</p> <p>10 expanded to include myself and Doctor Kaye and</p> <p>11 Anthony Sanzo.</p> <p>12 Q. What was the benefit of this program? Why was it</p> <p>13 considered a benefit that was limited to those</p> <p>14 individuals?</p> <p>15 MS. DeMASI: Objection to form.</p> <p>16 A. I guess it was access to funds to invest as the</p> <p>17 executive chose to invest it. Property or real</p> <p>18 estate or whatever.</p> <p>19 Q. (BY MR. TAMBURRI) Who paid the interest on these</p> <p>20 executive loans?</p> <p>21 A. I'm not quite sure how the original arrangement was</p> <p>22 established. The subsequent arrangement, when I</p> <p>23 was offered the program and we did the program, it</p> <p>24 was to be deducted from the executive Exec-U-Flex</p> <p>25 allowance.</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. Did all of the six individuals that you 2 identified participate in the Executive Loan 3 Program? 4 A. I don't believe Doctor Kaye did, but I think the 5 others, all the others did. 6 Q. So they received loans? 7 A. Right. 8 Q. Okay. 9 10 (Document was marked Deposition 11 Exhibit Number 2474 for identification.) 12 13 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you 14 what's been marked as Exhibit 2474. Do you 15 recognize this document? 16 A. Yes, I do. 17 Q. What is this document? 18 A. It's a summary of a benefit program called the 19 KEYSOP or Key Executive Stock Option Plan. And 20 this would be for Sherif Abdelhak's summary of 21 compensation. 22 Q. Did you prepare this document? 23 A. Yes, I believe I did. 24 Q. And you prepared it because you were the HR Vice 25 President?</p>	<p style="text-align: right;">Page 84</p> <p>1 accrued under that plan to the termination of, 2 with the payout period under the contract. 3 Q. Okay. So as of June 5th, 1998, Mr. Abdelhak was 4 entitled to accrue future KEYSOP benefits at the 5 rate of \$702,000 per year? 6 A. Right. 7 MR. TAMBURRI: We're missing a copy of 8 this or -- I'll make a copy over the break, but we 9 need to... 10 11 (Document was marked Deposition 12 Exhibit Number 2475 for identification.) 13 14 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you 15 what's been marked as Exhibit 2475. I'll let you 16 look at that, but I'm going to refer you to the 17 page that's been Bates labeled AMS6 165. 18 Actually, let me refer you to the last page of 19 the Exhibit first, and that's Page 169. Could you 20 identify this document? 21 A. It appears to be a letter from David Deasy, 22 payroll -- corporate payroll manager to David 23 McConnell, summarizing his 1993 income for income 24 tax reporting purposes. 25 Q. Would you have received a copy of this at the time</p>
<p style="text-align: right;">Page 83</p> <p>1 A. That's correct. 2 Q. And you would have kept this in your file? 3 A. Yes. 4 Q. Part your practice? Mr. Abdelhak's base salary as 5 of June 5th, 1998 was how much? 6 A. \$1,020,460. 7 Q. What is the reference -- there's a reference to 8 "KEYSOP Plan Future Benefit Accrual Rate." What 9 does that mean, or what is that referring to? 10 A. I'm not sure I recall precisely. 11 Q. Okay. 12 A. And I hate to speculate, you know, as far as 13 recollection. 14 Q. That's fine. 15 A. Actually, I think I do recall. 16 Q. Okay. 17 A. This was the compensation summary prepared, I 18 believe, in connection with Mr. Abdelhak's 19 separation. 20 Q. Okay. 21 A. And his employment contract provided that if he was 22 separated from the organization, pay and benefits 23 would continue for a period of time. 24 Q. Okay. 25 A. And so this was a projection of what he might have</p>	<p style="text-align: right;">Page 85</p> <p>1 it was generated? 2 A. Possibly. 3 Q. Why do you say that? 4 A. I don't think I started receiving the summaries of 5 these letters until later on, maybe '95, '96. 6 Q. Okay. This document lists Mr. McConnell's total 7 income for 1993 as \$682,726.81. Is that consistent 8 with your recollection about his income for 1993? 9 A. I would say in general terms, yes. 10 Q. If you turn to the preceding page. Can you 11 identify this document for me? 12 A. A letter from Dave Deasy, payroll manager, payroll 13 director to David McConnell summarizing his 1994 14 W-2 income. 15 Q. Do you think you would have received a copy of this 16 letter? 17 A. Again, possibly. 18 Q. Okay. This letter lists Mr. McConnell's total 19 income for 1994 at \$821,571.84. Is that consistent 20 with your recollection about his total income for 21 1994? 22 A. I would say generally speaking, yes. 23 Q. If you could turn to the preceding -- or the next 24 page, which is 167. 25 A. Yes.</p>

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<p style="text-align: right;">Page 86</p> <p>1 Q. Do you think you would have received a copy of this 2 document?</p> <p>3 A. Again, I think it's entirely possible. I can't say 4 with specific recollection.</p> <p>5 Q. Fair enough. This lists Mr. McConnell's income, 6 total income for 1995 as approximately \$829,000. 7 Is that consistent with your recollection of his 8 total income for 1995?</p> <p>9 A. Yes.</p> <p>10 Q. And you would have known Mr. McConnell's total 11 income during these years in your capacity as HR 12 Vice President?</p> <p>13 A. Yeah, in one fashion or another through the reports 14 of the compensation and so forth.</p> <p>15 Q. The last page that I want to ask you about in this 16 exhibit is Bates labeled AMS 166.</p> <p>17 A. Yes.</p> <p>18 Q. Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Can you identify this page?</p> <p>21 A. Again, it's also a letter from David Deasy, senior 22 director, corporate payroll to David McConnell 23 summarizing his 1996 W-2 income.</p> <p>24 Q. And what was his total income for 1996?</p> <p>25 A. \$1,326,866.09</p>	<p style="text-align: right;">Page 88</p> <p>1 bonuses of other rank and file people. Not of this 2 magnitude.</p> <p>3 Q. Is it fair to say that Mr. McConnell in 1996 4 received around \$800,000 in benefits and bonuses?</p> <p>5 A. Yes.</p> <p>6 MR. TAMBURRI: Take a break if you want. 7 It's up to you. Let me know if you want to take a 8 break.</p> <p>9 THE WITNESS: No, it's fine. I just as 10 soon get through this.</p> <p>11 MR. TAMBURRI: Okay.</p> <p>12 Q. (BY MR. TAMBURRI) Can you tell me about the 13 incentive, the Management Incentive Program that 14 was in place at AHERF; what was it?</p> <p>15 A. Generally speaking, at the senior level it had two 16 components. It had a Short-term Incentive Plan 17 component which was based upon year-by-year 18 performance against goals and objectives, and then 19 a long-term component that was basically earned in 20 one year and then deferred for five years for 21 distribution. And the percentage target that you 22 were eligible for in both of short and long-term 23 programs was a function of your level in the 24 organization, and it varied from, I think in Sherif 25 Abdelhak's case, a target of -- an annual target of</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. You see -- what was Mr. McConnell's base pay for 2 1996?</p> <p>3 A. \$487,534.</p> <p>4 Q. It appears he also received a Graduate merger 5 bonus; how much did he receive?</p> <p>6 A. \$112,500.</p> <p>7 Q. He also received a Forbes merger bonus; is that 8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. How much was that?</p> <p>11 A. \$75,000.</p> <p>12 Q. The next line says "Miscellaneous Bonuses." How 13 much -- how many miscellaneous bonuses did he 14 receive? Or how much in dollars did he receive?</p> <p>15 A. \$252,023.09.</p> <p>16 Q. What were those miscellaneous bonuses provided to 17 Mr. McConnell for?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay. Are you aware of any other miscellaneous 20 bonuses that were provided to AHERF executives 21 during your tenure?</p> <p>22 A. Only the one I mentioned earlier that Abdelhak 23 received in the fall of '97.</p> <p>24 Q. Okay.</p> <p>25 A. I mean of this magnitude. There may be small spot</p>	<p style="text-align: right;">Page 89</p> <p>1 like 33 or 35 percent to 25 to 20. I don't recall 2 the precise details, it's been awhile.</p> <p>3 Q. When you refer to percentage, you're referring to 4 percentage of base salary?</p> <p>5 A. Base salary, correct.</p> <p>6 Q. So, the short-term incentive bonus to the extent 7 was provided to an executive was calculated as a 8 percentage of that executive's base salary?</p> <p>9 A. Right. For example, in Abdelhak's case, if his 10 salary was a million dollars, base salary was a 11 million dollars, then his annual bonus target would 12 be either 33 or 35 percent. The long-term 13 component, I believe, was capped at 20 percent of 14 base salary.</p> <p>15 Q. Okay. Were the short-term bonuses always 16 calculated as a percentage of an executive's salary 17 during your tenure at AHERF?</p> <p>18 A. I believe so. That was the intent.</p> <p>19 Q. Okay. And as to the long-term bonuses, were they 20 also always calculated as a percentage of base 21 salary during your tenure at AHERF?</p> <p>22 A. Yes, that's my recollection.</p> <p>23 Q. Okay. When did the incentive program that included 24 the short-term and long-term bonuses go into 25 effect?</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">Page 90</p> <p>1 A. Approximately 1989, 1990.</p> <p>2 Q. Who was eligible to receive either a short-term or</p> <p>3 long-term bonus under this program?</p> <p>4 A. The short-term bonus program went down to the vice</p> <p>5 president level in the organization. The Long-term</p> <p>6 Plan was for a smaller group of people, the top six</p> <p>7 or top eight people in the organization.</p> <p>8 Q. Who were those people?</p> <p>9 A. Would have been Sherif Abdelhak. David McConnell,</p> <p>10 Nancy Wynstra, Anthony Sanzo, myself, Doctor Ross.</p> <p>11 There may have been others but I don't recall.</p> <p>12 Q. Doctor Kaye?</p> <p>13 A. Doctor Kaye, yeah.</p> <p>14 Q. How many people would have been eligible to receive</p> <p>15 a short-term bonus if everyone at the VP level or</p> <p>16 comparable level was included?</p> <p>17 A. In 1995, '6, '7, and probably, well, the academic</p> <p>18 chairmen were included at that time, so it could</p> <p>19 have been in the neighborhood of a hundred plus</p> <p>20 people.</p> <p>21 Q. What was the purpose of the Incentive Program?</p> <p>22 A. It was to incend or motivate and reward for</p> <p>23 attainment of goals and objectives.</p> <p>24</p> <p>25 (Document was marked Deposition</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Yes, I did.</p> <p>2 Q. Okay. Do you remember attending it?</p> <p>3 A. Not specifically.</p> <p>4 Q. Okay.</p> <p>5 A. No.</p> <p>6 Q. Page 3, it begins, "Mr. Abdelhak presented an</p> <p>7 overview of the proposed revisions to the Annual</p> <p>8 and Long-term Incentive Plans.</p> <p>9 First of all, that is a reference to the</p> <p>10 incentive plans you and I have just been</p> <p>11 discussing; is that correct?</p> <p>12 A. Yes, correct.</p> <p>13 Q. The Annual Plan governed short-term bonuses; is</p> <p>14 that right?</p> <p>15 A. Yes.</p> <p>16 Q. And the Long-term Incentive Plan obviously governed</p> <p>17 long-term bonuses?</p> <p>18 A. Correct.</p> <p>19 Q. The sentence continues with text, "Noting that</p> <p>20 these proposed revisions have been developed as a</p> <p>21 result of concerns expressed by the Committee that</p> <p>22 the prior plans did not reflect an appropriate</p> <p>23 balance last between the various mission elements</p> <p>24 of the organization and the need for the</p> <p>25 organization to retain financial strength."</p>
<p style="text-align: right;">Page 91</p> <p>1 Exhibit Number 2476 for identification.)</p> <p>2</p> <p>3 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you</p> <p>4 what's been marked as Exhibit 2476. Again, I'll</p> <p>5 give you a chance to look at this. My question is</p> <p>6 going to be if you recognize this document?</p> <p>7 A. Yes, I recognize this document.</p> <p>8 Q. Okay. What is this document?</p> <p>9 A. It is the -- it's the minutes of the AHERF</p> <p>10 Compensation Committee held on March 7th, 1995.</p> <p>11 Q. Okay. And were these minutes prepared in the</p> <p>12 ordinary course of AHERF's business in its regular</p> <p>13 practice?</p> <p>14 A. Yes. Nancy Wynstra would have prepared the minutes</p> <p>15 to the meeting.</p> <p>16 Q. And would you have reviewed these minutes as part</p> <p>17 of your responsibilities as HR Vice President?</p> <p>18 A. Yes, I would usually do that.</p> <p>19 Q. And would you have kept a copy of these in your</p> <p>20 file?</p> <p>21 A. Yes, probably.</p> <p>22 Q. Okay. If you turn to the page, it's Page 3 of the</p> <p>23 minutes, the top is a Paragraph C. It says,</p> <p>24 "Mr. Abdelhak's --" let me take us one step back.</p> <p>25 You attended this meeting; right.</p>	<p style="text-align: right;">Page 93</p> <p>1 Do you remember that these incentive plans were</p> <p>2 revised around March of 1995?</p> <p>3 A. I don't recall.</p> <p>4 Q. Let me -- I'm not trying to play hide the ball</p> <p>5 here. Let me refer you to the page that's labeled</p> <p>6 2914 in the bottom right-hand corner.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. What is this document that begins on that</p> <p>9 page?</p> <p>10 A. It's a plan summary for the Management Annual</p> <p>11 Incentive Plan for AHERF for Administrative Guide.</p> <p>12 Q. So this is a plan governing the short-term bonuses?</p> <p>13 A. That's correct.</p> <p>14 Q. If you look at the last page of this summary, which</p> <p>15 is Page 7, and is also Bates labeled 2920, under</p> <p>16 Paragraph 20, "Effective Date", it says, "The Plan</p> <p>17 is effective as of July 1, 1994 and shall remain in</p> <p>18 effect until terminated by the Compensation</p> <p>19 Committee."</p> <p>20 Does this refresh your memory that this plan --</p> <p>21 or this is the summary of the plan that was in</p> <p>22 effect as of July 1, '94?</p> <p>23 A. That's correct, yes.</p> <p>24 Q. Are you aware of any provisions that governed the</p> <p>25 plan other than these pages that we've just</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1 referred to here, 2914 through 2920?</p> <p>2 A. Not that I'm aware of, no.</p> <p>3 Q. So this is, more or less, the Plan?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. If you turn to Page 2 of the Plan. It's on</p> <p>6 2915.</p> <p>7 A. (Witness complies).</p> <p>8 Q. At the top it says, "Must Goals"?</p> <p>9 A. Uh-huh, I see that.</p> <p>10 Q. What's your understanding as to what the "Must</p> <p>11 Goals" were of the plan?</p> <p>12 MS. DeMASI: Objection to form.</p> <p>13 A. I don't think I recall what they were.</p> <p>14 Q. (BY MR. TAMBURRI) Who prepared this Plan? Who</p> <p>15 would have prepared it?</p> <p>16 A. I don't recognize the formatting as something that</p> <p>17 would have come out of my office, so this might</p> <p>18 have been prepared by MCG.</p> <p>19 Q. If you look at Page 4 of the Plan, there's a table</p> <p>20 in the middle of the page. Do you see this?</p> <p>21 A. Uh-huh.</p> <p>22 Q. What's your understanding as to what that table</p> <p>23 depicts?</p> <p>24 A. That would help determine the individual's bonus</p> <p>25 award based upon the individual's performance and</p>	<p style="text-align: right;">Page 96</p> <p>1 MS. DeMASI: Objection.</p> <p>2 A. There were financial measures in the plans, yes.</p> <p>3 Q. (BY MR. TAMBURRI) Okay.</p> <p>4</p> <p>5 (Document was marked Deposition</p> <p>6 Exhibit Number 2477 for identification.)</p> <p>7</p> <p>8 Q. (BY MR. TAMBURRI) Mr. Kasperbauer, let me show you</p> <p>9 what's been marked as Exhibit 2477. Do you</p> <p>10 recognize this document?</p> <p>11 A. Yes, I do. It appears to be a report that would</p> <p>12 have been put together in preparation for</p> <p>13 determining incentive compensation. Doesn't say</p> <p>14 that but I think that was the purpose of it.</p> <p>15 Q. Okay. Do you know who prepared this document?</p> <p>16 A. Not for sure, no.</p> <p>17 Q. Would you have received a copy of this document at</p> <p>18 or around the time that it was prepared?</p> <p>19 A. Most likely, yes.</p> <p>20 Q. Would you have kept this in your files in the HR</p> <p>21 Department?</p> <p>22 A. Yes.</p> <p>23 Q. Why would you have done that?</p> <p>24 A. Well, this is, I guess, a part of the incentive</p> <p>25 compensation, so I keep that as a file for</p>
<p style="text-align: right;">Page 95</p> <p>1 the organizational performance.</p> <p>2 Q. So the calculation of an executive's bonus was</p> <p>3 dependent on the success or lack thereof of his or</p> <p>4 her business unit; right?</p> <p>5 A. Right.</p> <p>6 Q. But --</p> <p>7 A. If it's business unit achieved expectations and the</p> <p>8 individual achieved expectations, the target -- the</p> <p>9 bonus would be 20 percent. It could be, I guess,</p> <p>10 as low as 15 and as high as 25, according to this.</p> <p>11 Q. Okay. Is it fair to say, looking at this table,</p> <p>12 that if an executive was eligible for a bonus</p> <p>13 ranging between 5 percent and 35 percent of his or</p> <p>14 her salary, depending on how he or she performed</p> <p>15 and how his or her business unit performed?</p> <p>16 A. Yeah. And I would probably go on to say that</p> <p>17 judgement could be applied, but it could go from</p> <p>18 zero to 40 percent.</p> <p>19 Q. Okay. And this just refers to the short-term</p> <p>20 bonuses?</p> <p>21 A. That's correct.</p> <p>22 Q. Did you understand that some of the criteria for</p> <p>23 determining whether any executive was eligible for</p> <p>24 a short-term bonus was the financial performance of</p> <p>25 AHERF?</p>	<p style="text-align: right;">Page 97</p> <p>1 documentation purposes.</p> <p>2 Q. If you turn to the second page.</p> <p>3 A. Uh-huh.</p> <p>4 Q. And if you look at the footer, it says, "AA:kw"?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Does that lead you to think that Al Adamczak</p> <p>7 prepared this?</p> <p>8 A. I would conclude that, yes.</p> <p>9 Q. This document lists six performance measures. Do</p> <p>10 you see them listed there?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Is it your understanding that these are the six</p> <p>13 performance measures that AHERF had to satisfy for</p> <p>14 any executive to be eligible for either a</p> <p>15 short-term or a long-term bonus under this</p> <p>16 Incentive Plan?</p> <p>17 A. I think so, without going back and seeing what</p> <p>18 might have been set in the minutes at the beginning</p> <p>19 of the fiscal year.</p> <p>20 Q. Okay.</p> <p>21 A. But I -- I would conclude that, yes.</p> <p>22 Q. Okay. If we can look at these, could you tell me</p> <p>23 what these performance measures, first of all, what</p> <p>24 they were and what they were designed to measure?</p> <p>25 MS. DeMASI: I'm sorry, do you want him</p>

25 (Pages 94 to 97)